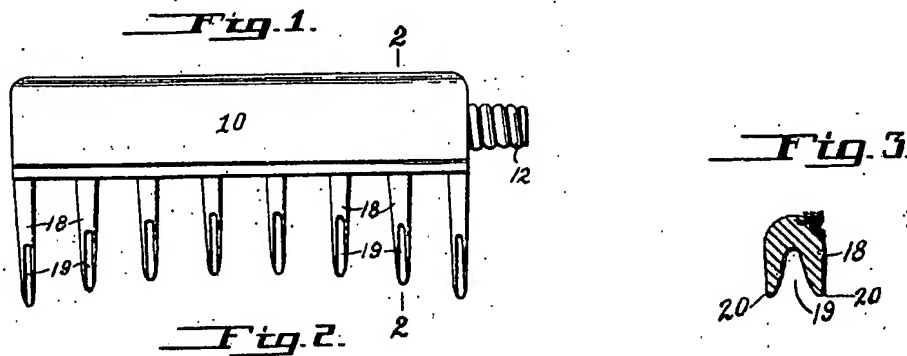




Simpson discloses a fountain comb having a container 10 and teeth 18 extending from container 10. Teeth 18 include tubular openings 17 extending from container 10 and, at their lower ends, the teeth 18 form a spoon-shaped or U-shaped cross-section, defining channels 19. As best shown in Figs. 1 and 3, channels 19 are open at their front side. See also page 2, lines 19-21, of Simpson. Figs. 2 and 3 of Simpson are reproduced below.



Independent Claim 1

Independent claim 1 is directed to an applicator nozzle comprising an attachment portion configured to attach the nozzle to a receptacle configured to contain a product. The nozzle further comprises “an arrangement of at least two teeth disposed so as to form at least one row comprising first and second end teeth, at least one of the teeth of the arrangement defining a channel being configured to be placed in flow communication with product contained in the receptacle.” The channel opens “on an exterior of the at least one tooth via at least one outlet aperture facing substantially in a direction of at least one adjacent tooth.” The nozzle also defines at least one groove, and the outlet aperture opens into the groove. The groove extends from the outlet aperture substantially to a free extremity of the at least one tooth.

As is abundantly clear, neither Di Vito nor Simpson teaches or suggests, among other things, “at least one outlet aperture facing substantially in a direction of at least one adjacent tooth,” as recited in independent claim 1.

While acknowledging these deficiencies of Di Vito and Simpson, the Examiner cites In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950), and alleges that “it would have been obvious ... to position the outlet aperture of Simpson facing substantially in a direction of at least one adjacent tooth, since it has been held that rearranging location of parts of an invention involves only routine skill in the art.” Applicants respectfully submit that the Examiner’s reliance on the Japikse case to assert, without any factual basis, obviousness of a missing element is clearly erroneous.

For example, the Examiner merely relies on the Japikse case for a general proposition that “rearranging location of parts of an invention involves only routine skill in the art.” Applicants’ review of the case, however, reveals no such generalized proposition or rule of law. On the contrary, the Board of Patent Appeals and Interferences (“the Board”) has made it clear in the past that Japikse should be limited to the facts of that particular case (i.e., missing subject matter relating to the position of a starting switch is immaterial and the overall operation of the device at issue in the Japikse case would not be affected by the position change). Ex parte Robles, 1997 WL 1883840 (Bd. Pat. App. & Interf.) (This opinion was not written for publication and is not binding precedent of the Board). Moreover, the Board has expressly rejected application of Japikse as a per se rule of obviousness and held that reliance on Japikse to establish obviousness under 35 U.S.C. § 103(a), without supplying a factual basis, is

improper. See Ex parte Makutonin, 2003 WL 23014547 (Bd. Pat. App. & Interf.) (This opinion was not written for publication and is not binding precedent of the Board).

In this case, the Examiner does not provide any factual basis or otherwise sufficient reasoning to support her allegation that rearranging the position of channels 19 of Simpson purportedly involves only routine skill in the art. In fact, the Examiner does not even carry out the prerequisite analysis (i.e., comparing the facts of the present case to those of Japikse) to determine whether any alleged holding in Japikse is even applicable in this case. Absent any such factual basis, as discussed above, the Examiner's mere reliance on Japikse in an attempt to allege obviousness under 35 U.S.C. § 103(a) is improper and clearly erroneous.

Moreover, Di Vito and Simpson, either taken alone or in combination, do not teach or suggest, among other things, the structural combination of "a channel," "at least one outlet aperture," and "at least one groove," as recited in independent claim 1. For example, the applicator nozzle of independent claim 1 includes at least one tooth defining "a channel ... opening on an exterior of [that tooth] via at least one outlet aperture" and "at least one groove," where the outlet aperture opens into the groove, and the groove extends from the outlet aperture substantially to a free extremity of the at least one tooth.

In the Office Action, the Examiner acknowledges that "Di Vito does not disclose the channel opening on an external lateral surface of at least one tooth via at least one outlet aperture ..., wherein the outlet aperture opens into a groove which has a first end into which the at least one outlet aperture opens and a second end located substantially at a free extremity of the at least one tooth." The Examiner then alleges that Simpson

discloses these deficiencies of Di Vito and, therefore, it would have been obvious to “construct the tooth [of Di Vito] with the outlet aperture and the groove configuration as taught by Simpson ... in order to provide maximum strength and ability to penetrate hair of the user.” Without necessarily agreeing with the Examiner’s alleged motivation, Applicants note that the Examiner’s characterization of the teachings of Simpson is unreasonable and erroneous and that Simpson does not teach or suggest all of the deficiencies of Di Vito.

For example, the Examiner alleges that tubular opening 17 and channel 19 of Simpson correspond to the recited “channel” and “outlet aperture,” respectively. With respect to the recited “groove,” the Examiner merely refers to Fig. 3 of Simpson and alleges that “the outlet aperture opens into a groove (fig. 3) which has a first end into which the at least one outlet aperture opens and a second end located substantially at a free extremity of the at least one tooth.”

Contrary to the Examiner’s allegation, however, spoon-shaped channel 19 of Simpson does not open into the portion of Simpson, which the Examiner appears to allege as corresponding to the recited “groove” (“the alleged groove portion”). Instead, the alleged groove portion is entirely formed by spoon-shaped channel 19 and does not form a groove separate from channel 19, as recited in independent claim 1. Also, because the alleged groove portion is, in its entirety, formed by channel 19, the alleged groove portion does not extend from channel 19, as recited in independent claim 1. Therefore, Simpson does not teach or suggest the structural combination recited in independent claim 1 and therefore does not supply the deficiencies of Di Vito.

For at least the reasons set forth above, Di Vito and Simpson do not teach or otherwise suggests all of the subject matter recited in independent claim 1 and, therefore, the Examiner's rejection of at least independent claim 1 under 35 U.S.C. § 103(a) should be withdrawn.

*Independent Claim 39*

Independent claim 39 is directed to an applicator nozzle comprising an attachment portion configured to attach the nozzle to a receptacle configured to contain a product. The nozzle further comprises "an arrangement of at least two teeth disposed in at least one row comprising first and second end teeth, at least one of the teeth of the arrangement defining a channel being configured to be placed in flow communication with product contained in the receptacle." The channel opens "on an exterior of the at least one tooth via at least one outlet aperture facing in a direction of at least one adjacent tooth." The at least one tooth "defines at least one groove having a first end into which the at least one outlet aperture opens and a second end located substantially at a free extremity of the at least one tooth."

For at least reasons similar to those outlined above with respect to independent claim 1, Applicants respectfully submit that neither Di Vito nor Simpson teaches or suggests, among other things, at least one outlet aperture facing in a direction of at least one adjacent tooth, as recited in independent claim 39. Di Vito and Simpson also do not teach or suggest, among other things, the recited structural combination of a "channel," an "outlet aperture," and a "groove" of independent claim 39. Therefore, the Examiner's rejection of at least independent claim 39 under 35 U.S.C. § 103(a) should be withdrawn.

Independent Claim 62

Independent claim 62 is directed to an applicator nozzle comprising an attachment portion configured to attach the nozzle to a receptacle configured to contain a product. The nozzle further comprises “an arrangement of at least two teeth disposed in at least one row comprising first and second end teeth, at least one of the teeth of the arrangement defining a channel configured to be placed in flow communication with product contained in the receptacle.” The channel opens “on an exterior of the at least one tooth via at least one outlet aperture facing in a direction of at least one adjacent tooth.”

For at least reasons similar to those outlined above with respect to independent claim 1, Applicants respectfully submit that neither Di Vito nor Simpson teaches or suggests, among other things, at least one outlet aperture facing in a direction of at least one adjacent tooth, as recited in independent claim 62. Therefore, the Examiner’s rejection of at least independent claim 62 under 35 U.S.C. § 103(a) should be withdrawn.

Independent Claim 84

Independent claim 84 is directed to an applicator nozzle comprising, among other things, “a plurality of teeth, at least one of the teeth defining a channel,” “at least one outlet aperture in flow communication with the channel, the outlet aperture opening to an exterior of the tooth on an external lateral surface of the at least one tooth,” and “at least one groove ... extending from the outlet aperture.” The nozzle also comprises “at least one groove configured to receive product exiting the at least one outlet aperture,

the groove extending from the outlet aperture substantially to a free extremity of the at least one tooth, wherein the at least one groove faces an adjacent tooth.”

For at least reasons similar to those outlined above with respect to independent claim 1, Applicants respectfully submit that neither Di Vito nor Simpson teaches or suggests, among other things, “at least one groove [facing] an adjacent tooth,” as recited in independent claim 84.

Moreover, as explained above in the discussion of independent claim 1, the Examiner alleges that tubular opening 17 and channel 19 of Simpson correspond to the recited “channel” and “outlet aperture,” respectively. Further, with respect to the recited “groove,” the Examiner merely refers to Fig. 3 of Simpson and alleges that “the outlet aperture opens into a groove (fig. 3) which has a first end into which the at least one outlet aperture opens and a second end located substantially at a free extremity of the at least one tooth.”

The Examiner, however, fails to specifically point out how the alleged groove portion is “configured to receive product exiting the at least one outlet aperture,” as recited in independent claim 84. Regardless of how the Examiner characterizes the alleged groove portion and spoon-shaped channel 19 of Simpson, the alleged groove portion of Simpson is disposed inside tubular opening 17 and is entirely formed by spoon-shaped channel 19, as explained above in connection with independent claim 1. Therefore, the alleged groove portion is not configured to receive product exiting at least one outlet aperture, as recited in independent claim 84.

For at least these reasons alone, Di Vito and Simpson do not teach or otherwise suggests all of the subject matter recited in independent claim 84 and, therefore, the



Examiner's rejection of at least independent claim 84 under 35 U.S.C. § 103(a) should be withdrawn.

Independent Claim 91

Independent claim 91 is directed to an applicator nozzle comprising, among other things, "at least two teeth arranged in at least one row, at least one tooth of the row having at least one outlet aperture configured to permit product to flow therethrough for application to a surface, ... wherein the outlet aperture faces in a direction of an adjacent tooth."

For at least reasons similar to those outlined above with respect to independent claim 1, Applicants respectfully submit that neither Di Vito nor Simpson teaches or suggests, among other things, "the outlet aperture [facing] in a direction of an adjacent tooth," as recited in independent claim 91. Therefore, the Examiner's rejection of at least independent claim 91 under 35 U.S.C. § 103(a) should be withdrawn.

Independent Claim 101

Independent claim 101 is directed to an applicator nozzle comprising, among other things, "a row of teeth ... comprising at least one tooth defining a channel configured to allow product to flow therethrough, the channel opening on an exterior of the tooth via at least one outlet aperture facing in a direction of an adjacent tooth."

For at least reasons similar to those outlined above with respect to independent claim 1, Applicants respectfully submit that neither Di Vito nor Simpson teaches or suggests, among other things, "at least one outlet aperture facing in a direction of an adjacent tooth," as recited in independent claim 101. Therefore, the Examiner's

rejection of at least independent claim 101 under 35 U.S.C. § 103(a) should be withdrawn.

Dependent Claims 2, 4-6, 9-23, 40, 42-44, 47-61, 63, 65, and 68-83, 85-90, 92-100, and 102-110

Dependent claims 2, 4-6, 9-23, 40, 42-44, 47-61, 63, 65, and 68-83, 85-90, 92-100, and 102-110 depend from one of independent claims 1, 39, 62, 84, 91, and 101. At least by virtue of their respective dependency from one of independent claims 1, 39, 62, 84, 91, and 101, the rejection of those dependent claims under 35 U.S.C. § 103(a) based on Di Vito and Simpson should also be withdrawn.

For at least the reasons set forth above, Applicants respectfully submit that Di Vito and Simpson, taken either alone or in combination, do not teach or otherwise suggest each and every element recited in each of the independent claims. Thus, Applicants respectfully request reconsideration and withdrawal of the 35 U.S.C. § 103(a) rejection based on Di Vito and Simpson.

**II. Examiner's proposed modification of Simpson would destroy teachings of Simpson or at least change operational principle of Simpson**

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. In re Ratti, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). In this case, even assuming for the sake of argument that the Examiner had properly relied on the Japikse case for her proposed modification of Simpson (a notion that Applicants dispute), Applicants respectfully submit that the Examiner's proposed modification of Simpson would necessarily destroy the teachings of Simpson or at least change the principle of operation of Simpson.

Consequently, the alleged teachings of Di Vito and Simpson would not be sufficient to render Applicants' claims *prima facie* obvious, and the Examiner's proposed modification of Simpson would not have been obvious to one of ordinary skill in the art.

For example, contrary to the Examiner's allegation, rearranging the position of channels 19 of Simpson would not have been obvious to one of ordinary skilled in the art because, among other reasons, rearranging the position in the manner proposed by the Examiner would destroy, or at least materially alter, the operational principle of the Simpson device. In particular, Simpson expressly teaches that the channels 19 are open at their front sides. See, e.g., page 2, lines 29-30. These channels 19, forming spoon-shaped cross-sections, are used to remove dandruff (or other substances) from the roots of the hair and the scalp while the device is used substantially the same as an ordinary comb. See, e.g., page 2, lines 20-29 and 71-96. That is, while the device is used in an ordinary combing action (e.g., brushing in the forward direction perpendicular to a side of the device), the channels 19 facing the same forward direction raise and carry dandruff from the scalp. If, however, the channels 19 of Simpson were modified to face a direction of adjacent teeth, as proposed by the Examiner, the channels 19 would not be able to remove dandruff from the scalp in an ordinary brushing action, thereby necessarily destroying the express teachings of Simpson.

Therefore, rearranging the position of channels 19 of Simpson would not have been obvious to one of ordinary skill in the art because such a modification would necessarily destroy the teachings of Simpson or at least change its operational principle.

For at least the reasons set forth above, the Examiner's rejection under 35 U.S.C. § 103(a) based on the alleged combination of Di Vito and Simpson is improper and clearly erroneous. Thus, Applicants respectfully request reconsideration and withdrawal of the 35 U.S.C. § 103(a) rejection based on Di Vito and Simpson.

**35 U.S.C. § 103(a) Rejection Based on Di Vito, Simpson, and Smith**

Claims 3, 7, 8, 41, 45, 46, 64, 66, and 67 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Di Vito in view of Simpson, and further in view of U.S. Patent No. 1,180,199 to Smith ("Smith").

Dependent claims 3, 7, and 8 depend from independent claim 1; dependent claims 41, 45, and 46 depend from independent claim 39; and dependent claims 64, 66, and 67 depend from independent claim 62. As discussed above, the Examiner's rejection of independent claims 1, 39, and 62 based on the alleged combination of Di Vito and Simpson is improper and clearly erroneous. Also, Smith does not supply the deficiencies of Di Vito and Simpson.

Therefore, the rejection of claims 3, 7, 8, 41, 45, 46, 64, 66, and 67 under 35 U.S.C. § 103(a) based on the alleged combination of Di Vito, Simpson, and Smith should be withdrawn for at least the same reasons set forth above with respect to the rejection of independent claims 1, 39, and 62.

**Conclusion**

For at least the above-outlined reasons, all of pending claims 1-23 and 39-110 are patentably distinguishable from Di Vito, Simpson, and Smith. Therefore, Applicants respectfully request reconsideration and withdrawal of all of the outstanding rejections in the March 19, 2007 Office Action.

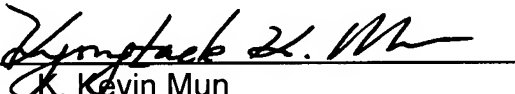
The Examiner is invited to call the undersigned if a telephone conversation might advance prosecution of the application.

Please grant any extensions of time required to enter this Reply and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: November 19, 2007

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